Boralex

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Massachusetts Department of Energy Resources
Green.Communities@MassMail.State.MA.US

RE: Comment – Import Feasibility Study

Dear members of the Department,

Enclosed please find the comments of Boralex Inc. regarding the feasibility of implementing subsections (c) and (e) of section 105 of the Green Communities Act. As requested, the initial paragraph is a brief summary of our position. Please let me know if you require any additional information and thank you for the opportunity to comment on this important process.

Sincerely,

Nathan Hebel
Director, Energy Trading
Boralex, Inc.

Summary

Boralex believes that the definition of feasible is not only a process that is theoretically possible, but one that is realistic, reasonable, and effective in providing the intended results. Neither subsection (c) – capacity nor subsection (e) – netting meet these criteria because the market is not structured such that resources are able to participate, monitoring mechanisms would be prohibitively expensive at best and impossible at worst, and implementation of these subsections would have the unintended consequence of rendering the Massachusetts REC market broken.

About Boralex

Boralex is a major private electricity producer whose core business is the development and operation of renewable power stations. Employing close to 300 people, Boralex owns and operates 21 power stations with a combined installed capacity of approximately 350 MW in New England, New York, Quebec, and France. The Corporation also has 240 MW of contracted capacity for future production sites. Boralex is distinguished by its leading expertise and long experience in three types of power generation – biomass, wind, and hydro.

Boralex currently participates in the RPS programs in Massachusetts, Connecticut, and New York. Boralex is uniquely positioned to comment on this process as we own and operate renewable assets in New England both inside and outside the ISO-NE electrical system.

Feasibility

There are many things in this world that are theoretically possible, but most of those are not feasible. The difference in terminology between the two is vast and important in this process. A "possible" action is one that could theoretically occur, regardless of how improbable it may be or how disastrous the results would be. A "feasible" action is not only possible but also realistic, reasonable, and effective in providing the intended results. In drafting subsection (g) of section 105 of the Green Communities Act, the legislature could have used the term "theoretically possible" to describe the criteria for implementing but did not. Further, the fact that subsection (g) exists at all in the Act speaks to the uncertainty surrounding these import issues and the concern to avoid enacting a law that would cause the RPS to grind to a halt. For this and for the reasons outlined below, Boralex respectfully submits that sections (c) and (e) are not feasible.

Subsection (c) – Capacity: Intermittency Rules

As currently written, the rules in ISO-NE for intermittent external resources are not defined. In our review of the ISO-NE tariff with respect to the Forward Capacity Market ("FCM"), we find guidance for intermittent capacity resources as well as for external resources, but not for intermittent external resources. Until guidance for this designation is clear, any wind or run-of-river hydro that looks to import RECs would find it infeasible to participate in FCM and clear this hurdle #1 for meeting subsection (c).

Subsection (c) – Capacity: Interchange Limits

For all external sources, there are limitations on the firm transfer capability into ISO-NE. Note, however that the firm transfer capacity used in FCM is substantially less than the actual day-to-day maximum capability to delivery energy into ISO-NE. Thus, when import assets compete to provide capacity to ISO-NE and the firm capacity is over-subscribed, the capacity award is apportioned between projects. In this case, through no fault of its own, a renewable generator is not able to fully secure capacity commitments into ISO-NE. Despite this limitation on capacity delivery, the actual renewable energy will still likely flow on a day-to-day basis because of the higher actual transfer volumes mentioned above. Until interchange capacity limits match with energy delivery limits or renewable capacity sources are given priority, then renewable import resources would find it infeasible to participate fully in FCM and clear this hurdle #2 for meeting subsection (c).

Subsection (c) – Capacity: No Mechanism to Offer Capacity

There are three separate avenues for capacity resources to offer their product into the market: FCM auction, FCM reconfiguration auction, and bilateral contracts. Each of these avenues create concerns over the ability for import resources to participate in the capacity markets.

The next FCM auction is for the 2011/2012 reliability year and will occur on Dec 8, 2008. Note however that in order for a new capacity resource to participate in this auction, multiple eligibility steps needed to be met and the deadlines have since passed. Furthermore, deadlines for new resource eligibility in the FCM auction for 2012/2013 have already passed as well. This means that the earliest a new project could participate in the FCM auction is for the 2013/2014 reliability year. Any subsection (c) capacity requirement before that date is clearly infeasible from this market mechanism.

FCM reconfiguration auctions are designed to be a potential intermediate auction between the auction date and the delivery date of the capacity. In theory a new capacity resource could participate in these auctions, *if* the auctions go forward. ISO-NE rules state that the reconfiguration auctions will be cancelled if there is no buyer who participates in that particular capacity zone. Thus there is no guarantee now or any time in the future that a new capacity resource will be able to feasibly provide capacity by way of this mechanism.

Bilateral contracts are meant to provide a market for capacity resources to sell forward their capacity awards at a fixed price to create a predictable capacity revenue stream. First, there is no guarantee that a robust and deep bilateral market will exist for buyers and sellers to meet. Second, even if a new renewable generator is successful in finding a bilateral counterparty to sell forward the capacity obligation, there is no guarantee that the generator will be awarded the capacity they need to deliver. The interchange limits mentioned earlier can result in a pro-rata reduction in capacity awarded and intermittent rules for determining final capacity are both uncertainties that could put the generator in the position of not being able to complete delivery of the capacity contract they had negotiated due to REC import capacity obligations.

For the reasons stated in each of these 3 market mechanisms, renewable import resources would find it infeasible to participate fully in FCM and clear this hurdle #3 for meeting subsection (c).

As an existing renewable power generator outside ISO-NE, we can state that these limits, rule ambiguities, and market mechanism uncertainties make it impossible to know if any long term capacity deliveries will occur for any specific asset. As an existing renewable power generator inside ISO-NE, we can state that capacity obligations as an internal existing resource are straightforward and feasible. In order to have a comparable and level playing field, the rules for treating new external resources must be equivalent to the rules for existing internal resources before one could argue that subsection (c) is feasible.

Subsection (e) – Netting: Enforcement Hopelessly Complex

As a simple practical matter, subsection (e) reaches so far into the operations of each participating Person as to make the enforcement infeasible. Netting renewable imports with net exports would require hourly data on every single import and export transaction made across ISO-NE interfaces from every single entity. The sheer volume of these data is daunting, but theoretically possible to accumulate – whether it is feasible to accumulate and manage within a reasonable budget is a big question mark. However, that is not the end of the problems with feasibility for netting. Subsection (e) goes on to offset exports made by affiliates of the person and "any other person under contract with such person to export energy from the ISO-NE control area and deliver such energy directly or indirectly to such person." We do not believe it is possible (much less feasible) for the Department to reach in and determine which person is under contract with which other persons for the direct or indirect purpose of exporting and delivering power to each other outside of the ISO-NE control area. Thus we believe that it is infeasible to effectively implement subsection (e) on the grounds that the Department cannot know if the subsection is being adhered to.

Some parties have suggested that self-certification is an answer, particularly if other competing parties would be given access to all of these data. Presumably, these competitors would then incur the cost of enforcement by combing through the reams of data to search for non-compliance. We find this suggestion obviously unworkable for many reasons. First, providing competitors unfettered access to confidential data is a non-starter for most energy companies. Second, any results from this competitor analysis would need to be thoroughly reviewed by the Department, which would incur the massive undertaking the Department would seek to avoid in the first place. Third, any structure like this would clearly continue to encourage the antagonistic culture of in-fighting that has unfortunately soured the renewable market recently.

Subsection (e) – Netting: True Netting of All Imports and Exports

To our understanding, the goal of subsection (e) is to prevent parties from importing in renewable power across an interface while immediately exporting non-renewable power back out. Without discussing the merits of this goal, it is clear that in order to achieve this effect, true netting would need to be applied. Assuming that the major task of enforcement could be met, then netting of renewable imports should take place with respect to all non-renewable imports and exports of that person, their affiliates, and all other persons who contract with that person to directly or indirectly deliver power to them outside of ISO-NE.

For example, if an entity creates 200 MW of non-renewable imports at once interface and 200 MW of non-renewable exports at another interface, then the introduction of an additional renewable import of 10 MW would result in no true netting reduction. In other words, the net impact of the entity is to introduce 10 MW of renewable energy into ISO-NE. Any other interpretation of subsection (e) would be counter to the goals of the RPS, which is to bring renewable power into the region.

Unintended Consequences

As a renewable energy developer and operator, Boralex applauds the goals of Massachusetts in encouraging renewable energy through the RPS program. We believe that if the Department determines subsections (c) and (e) as feasible, then many current and future renewable assets would not be able to comply. The practical result would be: 1) renewable assets and projects would look elsewhere to serve clients, 2) the Massachusetts REC market would chronically short to such an extent that it would more like a tax to ratepayers at the Alternative Compliance Payment price instead of an actual market, and 3) states and provinces who are shunned would likely look to cure the situation both with legal challenges and with corresponding restrictions going in the opposite direction.

In the effort to encourage renewable energy, we must acknowledge that any regulation which effectively kills the renewable market dead in its tracks is not a feasible regulation.